IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

MFA.No. 92 of 2003(B)

OPMV.1559/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT: PETITIONER:

GEORGE T.JOHN, S/O. K.V.JOHN,
THURUKKADAYIL HOUSE, KOKAPPILLY P.O.

BY ADV. SRI.T.K.KOSHY
SRI.K.P.PAULOSE

RESPONDENTS: RESPONDENTS:
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1. THE MANAGING DIRECTOR,
K.S.R.T.C., TRIVANDRUM.

2. GEEVARGHESE, S/O. OUSEPH,
VADAIKARAYIL HOUSE, VETTOOR KARA, MAZHUVANNOOR.

BY ADV. SRI.SAJEEVKUMAR K GOPAL,SC KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.92 OF 2003

Dated 14th September, 2007

JUDGMENT

Koshy,J.

Appellant filed an application for compensation of Rs.5,00,000/= alleging that at the age of 24 he sustained grievous injuries in a motor accident on 25.1.1996 when the K.S.R.T.C. bus driven rashly and negligently by the 2nd respondent herein dashed against the motor cycle ridden by the appellant. The appellant was immediately admitted in the Medical Trust Hospital where he was initially diagonised as having sustained- transverse fracture of femur at middle third and compound fracture of both bones of left leg at upper third etc. He underwent series of operations and hospitalisation following the accident. Though it was found that accident occurred due to the negligence of the 2nd respondent, only Rs.1,15,252/= was awarded by the Tribunal against a claim for Rs.5,00,000/=. Only quantum of compensation is disputed in this appeal.

2. The amounts claimed and awarded are as follows:

Head	Claim	Award
Part-I		
Loss of earnings	30,000/- (2500x12)	13,500/- (1500x9)
Transport to hospital	10,000/-	2,000/-
Extra Nourishment	10,000/-	2,120/-
Damage to clothings & articles	3,000/-	250/-
Medical expenses	50,000/-	28,782/-
Future Medical expenses	20,000/-	3,000/-
Loss of Amenities and enjoyment in life	1,00,000/-	12,000/-
Part II		
Pain & Suffering	1,00,000/-	--------
Permanent Disability	2,00,000/-	48,600/- (1500x12x15%x18)
Marriage Prospects	2,00,000/-	5,000/-
Total	5,00,000/-	1,15,252/-

Appellant was an electrician by profession. Ext.A8 shows that he was an I.T.I. Trade certificate holder. Appellant produced Ext.A7 certificate to show that he was employed in a company called `Trans Electrics', Ernakulam and he was getting a monthly income of Rs.2,500/=. Since employer was not examined, Ext.A7 was not relied on and only Rs.1,500/= was taken as monthly income. He was an ITI diploma holder. Considering his qualification, at least Rs.2,000/= ought to have been taken by the Tribunal as his monthly income.

3. As regards his injuries are concerned, tribunal has considered the matter in detail and found as follows:

> "14. Ext.A3 is the copy of wound certificate cum discharge certificate issued from Medical Trust Hospital, Ernakulam in which the doctor, has noted that the petitioner was admitted on 25.1.1996 at 11.35 p.m. Ext.A4 is the discharge summary issued from the same hospital. As per that certificate, he sustained deformity left thigh with punctured wound over lateral aspect, deformity m/3rd left leg, LW left heel and black eye left. He also sustained segmental comminuted fracture M/3rd, left leg fracture BB L/3rd, M/3rd junction. He was given debridement and tibial pin traction and B.K.slab. On 10.2.1996 I.M. nailing (open) left femur done under general anaesthesia and on 15.2.1996 CXR (L) tibia done with lower tibial pin and B.K. cast was applied. He was discharged on 26.2.1996 with advice non-weight bearing (L) L.L. and review after 4 weeks. On 26.3.1996 he was admitted and reviewed and on 31.3.1996 nailing for left tibia done under general anaesthesia and he was discharged on 8.4.1996 with advice non weight bearing (L) L.L. and review after 3 weeks. He was reviewed on 30.4.1996 and on 4.5.1996 PTB cast applied and discharged on 6.5.1996 with advice partial weight bearing (L) L.L. and review after 4 weeks. Hence, he was reviewed on 4.6.1996 and on 6.6.1996 he was discharged after POP removal and mobilised with crepe bandage and he was again reviewed on 4.7.1996 and he was given advice to take medicine for 1 month and review after 1 month. As per Ext.A4, he was an inpatient for 53 days. Ext.A6 series are the medical bills for proving his treatment expenses. By Exts.A3, A4 and A6 the petitioner has proved the injuries, treatment and consequential loss sustained by him.
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> 15. Ext.A5 is the disability certificate issued by the Dr.V.K.Krishnankutty, Civil Surgeon of General Hospital, Ernakulam, who has been examined as

> PW2 to prove the disability certificate. In Ext.A5, the doctor has noted that he is orthopaedically disabled person having post traumatic sequelae (fracture left femur and both bones left legs) left lower limb with stiffness of left knee with limitation of flexion. He has shortening of lower limb by 1.5 inches and hence his permanent partial disability is assessed to be 30%."

Tribunal observed that medical certificate was not issued by Medical Board and did not calculate compensation for disability in a scientific manner, but, only awarded Rs.48,600/-. In view of the shortening of lower limb by 1.5 inches and stiffness of knee with limitation of flexion, we are of the view that compensation ought to have been calculated for 15% disability. Tribunal has taken 18 as the multiplier. It was pointed out that Apex Court in many cases held that if the accident victim is between 20 to 25 a high multiplier should be taken. But, taking second schedule for guidance we take only 17 as the multiplier. If that be so, compensation payable for disability and loss of earning power will be Rs.61,200/= (Rs.2,000 x 12 x 17 x $\frac{15}{100}$).

After deducting Rs.48,600/= awarded by the Tribunal, additional compensation payable for permanent disability and loss of earning power will be Rs.12,600/=. For actual loss of earnings for the nine months' treatment period, Tribunal has granted Rs.13,500/=. Since we have increased monthly income at Rs.2,000/=, actual loss of earning payable for the above nine months' period of treatment will

be Rs.18,000/=. Thus, additional compensation payable on this count will be Rs.4,500/=. Tribunal has granted Rs.28,782/= towards medical expenses against a claim of Rs.50,000/=. The above amount is regarding the actual medical bills produced. We are of the opinion that when a person is admitted in hospital for 45 days and nine months' treatment both as inpatient and outpatient, there may be many expenses not covered by bills. We award an additional amount of Rs.2,000/= on that count. Even though it was argued that compensation awarded under all other heads are inadequate, we are of the view that no further enhancement is necessary. Hence, appellant is entitled to an additional amount of Rs.19,100/=, over and above the decreed amount by the Tribunal. First respondent shall deposit the same with 7% interest from the date of application till its deposit. On deposit of the amount, appellant is entitled to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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